

Original

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

CLEVELAND WAYNE WILLIAMS,

Defendant-Appellant.

Supreme Court No. 126956

Court of Appeals No. 239662

Circuit Court No. 01-7419-01

WAYNE COUNTY PROSECUTOR  
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126956 /

APPELLANT'S REPLY  
TO APPELLEE'S SUPPLEMENTAL BRIEF

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## **STATEMENT OF FACTS**

Defendant-Appellant Cleveland Wayne Williams relies on the Statement of Facts in his previously filed application for leave to appeal and supplements it as follows. The Prosecutor has filed a supplemental brief in opposition to Mr. Williams' application asserting that the Department of Corrections (DOC) did not comply with its obligations under MCL 780.131 and concluding that thus the Prosecutor's obligations under the statute were not triggered.

## **ARGUMENT**

### **I. THE PROSECUTOR'S OFFICE HAD NOTICE OF MR. WILLIAMS INCARCERATION IN THE DOC FROM THE BEGINNING, I.E. MAY 2000, THROUGH THEIR AGENT, INVESTIGATOR LEE, THE OFFICER-IN-CHARGE.**

The Prosecutor's office had notice of Mr. Williams' incarceration in the DOC from the beginning through their agent, Investigator Lee, the office-in-charge for Mr. William's case. All of the documents referred to, and attached as appendices, were obtained under the Freedom of Information Act from the Michigan Department of Corrections by undersigned counsel. (See "Response to Request for Public Records – FOIA" attached as Appendix M). Appellant asks this Honorable Court to permit the record to be expanded with these documents pursuant to MCR 7.316(A)(4).

On May 15, 2000, even prior to the warrant being sought in the instant case, the Detroit Police Department's Investigator Lee notified the DOC that he was going to request a warrant for Mr. Cleveland's arrest in the instant case "but that it will not be ready for signing until May 26, 2000." (See Appendix A, Parole Violation Report, dated May 24, 2000, p 2, under "Court Information".) Investigator Lee informed the DOC that Mr. Williams would be made available to the DOC on May 23, 2000. (Id.).

The DOC's records contain a copy of Investigator Robert Lee's report and the Wayne County Prosecutor's Office recommendation for a warrant in the instant case. (See Appendix B, Report & Recommendation, p 1). The recommendation for the warrant is dated May 26, 2000. (Id.) The report lists Investigator Robert Lee as the investigating officer and the officer in charge ("the OIC") of the case. (Id., pp 1-3).

On August 9, 2000, the Detroit Police Department filed a hold on Mr. Williams in regard to the instant case in the DOC. (See Appendix C, Request for Hold/Notification). On the hold document there is a handwritten address: "1300 Beaubien, Carjacking Unit, Det. MI 48226." (Id.)

On January 26, 2001, the DOC (by the Ojibway Correctional Facility) sent written notice that Mr. Williams was incarcerated within the DOC and seeking disposition of the warrant in the instant case. (See Appendix D, January 26, 2001 letter.) The DOC sent this notice to the Detroit Police Department at the address that had been written on the hold. (See Appendices C & D). There is a handwritten note on the January 26, 2001 letter indicating that on February 1, "2000" (sic) the police department gave the DOC a different address to send the notice. (See Appendix D).

Subsequently, on February 1, 2001, the DOC (by the Ojibway Correctional Facility) sent the written notice of incarceration and request for disposition of pending warrant via certified mail return receipt to Investigator Lee at the 2<sup>nd</sup> Precinct. (See Appendix E, February 1, 2001 letter, certified mail receipt, both sides of return receipt).<sup>1</sup> Investigator Lee signed the return receipt on February 5, 2001. (See Appendix E, return receipt, boxes B and C).

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<sup>1</sup> On the February 1, 2001 letter there appears to be a handwritten note that was crossed out and is illegible.

The DOC's records show that a follow-up phone call was made to Investigator Lee on March 20, 2001, but that Investigator Lee was on vacation. (See Appendix F, Memorandum of Interviews and Telephone Calls). The DOC was told that Lee would be out of the office until April 1, 2001 but that the DOC should move Mr. Williams "closer, Jackson area, call and notify them" and "[t]hey'll either 'writ' him out from there or have him parole into custody."<sup>2</sup> (Id.)

The DOC followed up on April 3, 2001 with Investigator Lee, who indicated that "they'll 'writ' him out." The notes indicate that the DOC was to transfer Mr. Williams down as close as it could and that the police would pick him up from there. (Id.)

Again, on May 2, 2001, the DOC followed up with a phone call to Investigator Lee and was told that a "WRIT" would be coming "ASAP". (Id.). The DOC phoned Investigator Lee again on May 17, 2001 to inform him that Mr. Williams was being transferred. (Id.)

The DOC followed up again in June. A handwritten note on a computer printout of the detainer/hold indicates the DOC called and left a message on June 13, 2001. (See Appendix G). The phone number written on the printout is (313) 596-5272, i.e. the phone number for Investigator Lee as indicated on Appendix F, Memorandum of Interviews and Telephone Calls. (Id.). Another notation indicates that the "[w]rit will be signed 6/14/01". (Id.)

Finally, on June 14, 2001, a writ was entered for Mr. Williams to be released into the custody of the Detroit Police Department for arraignment on the warrant in this case at the 36<sup>th</sup> District Court. (See Appendix H, Writ for Habeas Corpus, signed 6/14/01). The Detroit Police Department took Mr. Williams into custody on June 18, 2001. (See Appendix I, Release Certification).

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<sup>2</sup> Mr. Williams was incarcerated in the Ojibway Correctional Facility. (See Appendices D & E). Ojibway Correctional is in the Upper Peninsula close to the Wisconsin border.

The Preliminary Examination was held on June 28, 2001. (See Preliminary Examination Transcript). Beforehand the DOC had again released Mr. Williams to the custody of the Detroit Police Department on a writ. (See Appendix J, Writ and Release Certification.) Afterwards, Mr. Williams was again returned to the DOC. (See Appendix K, Court Order that Detroit Police Department return Mr. Williams to Cotton Correctional Facility).

On July 12, 2001, the DOC (by the G. Robert Cotton Correctional Facility) sent a written notice of incarceration and request for disposition of pending warrant addressed to elected Wayne County Prosecutor Michael Duggan. (See Appendix L, July 12, 2001 letter and both sides of return receipt). The signed return receipt lists the date of delivery as July 16, 2001. (*Id.*)

The Detroit Police Department, particularly Investigator Lee, was acting as an agent of the Prosecutor's Office.<sup>3</sup> From the beginning, Investigator Lee dealt with the DOC on the matter of the warrant in the instant case; it was the police department that placed the hold for the prosecutor's warrant; and it was Investigator Lee who continued to deal with the DOC on the pending warrant. The DOC relied on the actual or apparent authority of Investigator Lee to facilitate disposition on the warrant and as such the Prosecutor is bound by Investigator Lee's knowledge. Restatement Second, Agency §§ 268, 273.

The circumstances in this case are qualitatively different than those in People v Metzler, 193 Mich App 541, 484 NW2d 695 (1992) and People v Taylor, 199 Mich App 549, 502 NW2d 348 (1993), where the Court of Appeals held that the Prosecutor did not have knowledge of the defendant's incarceration in the DOC. In Metzler, *supra* at 545, the Court of Appeals held that the Prosecutor had no notice of the defendant's incarceration in the DOC (and that the DOC had

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<sup>3</sup> An agent is a person having express or implied authority to represent or act on behalf of another person, who is called his principal. Burton v Burton, 332 Mich 326, 337, 51 NW2d 297 (1952).

no notice of the outstanding warrant) where the police department failed to enter the warrant information on the Law Enforcement Information Network (LEIN). In Taylor, *supra*, the Court of Appeals did not impute the knowledge of an Oakland County Probation Officer that the defendant was incarcerated in the DOC to the Wayne County Prosecutor.

The present case involves the knowledge of the investigating officer, i.e. the Officer-in-Charge. “Certainly, the prosecution must be imputed with knowledge of facts which are known to its chief investigative officer.” People v Cassell, 63 Mich App 226, 228-229 (1975). The United States Supreme Court has held that a prosecutor may not claim ignorance of information known to the police investigators working on the case. Kyles v Whitley, 514 US 419, 437-438, 115 S Ct 1555, 131 L Ed 2d (1995).

Under the circumstances of this case, it would be fundamentally unfair, i.e. a violation of due process, to allow the Prosecutor to hide behind the Officer-in-Charge to shirk its duty and deny to Defendant the mandatory relief of dismissal of the charges promised in the statute.<sup>4</sup> US Const, Am XIV; Const 1963, Art 1, § 17; see People v Toma, 462 Mich 281, 294, 613 NW2d 694 (2000)(“We agree with the proposition that if a criminal defendant relies on a promise from the state and the state breaches that promise, the state must provides a remedy for any resulting due process violation.”)

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<sup>4</sup> MCL 780.131 and MCL 780.133 create a liberty interest and mandate a particular outcome if the predicates are present, as such Due Process must be observed. See Tony v Childers, II, 71 F 3d 1182, 1185 (CA 6, 1995).



**SUMMARY AND REQUEST FOR RELIEF**

**WHEREFORE**, for the foregoing reasons and the reasons given in his previously filed Application for Leave to Appeal, Defendant-Appellant **CLEVELAND WAYNE WILLIAMS** asks this Honorable Court to grant leave to appeal or take appropriate peremptory action, to reverse, and to order that the charges be dismissed with prejudice.

Respectfully submitted,

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